



State of Utah

Department of
Environmental Quality

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May 13, 2004

Mr. Wayne L. Welsh
Legislative Auditor General
Office of Legislative Auditor General
West 315 State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Welsh,

RE: Department of Environmental Quality Response to Legislative Audit Report, "A Performance Audit of the Department of Environmental Quality's Waste Facility Oversight," dated May 12, 2004.

Thank you for the opportunity to respond to the above-referenced Legislative Audit Report. Radioactive and hazardous waste regulatory issues are complex. I appreciate the auditors' efforts to evaluate and provide recommendations to strengthen the programs. We have provided clarifications and comments, as detailed below, in an effort to better understand and improve the regulation of commercial radioactive and hazardous waste.

Chapter I. Introduction

The Department of Environmental Quality lacks a written plan to guide its oversight of commercial waste disposal facilities. (Page 1, paragraph 2, sentence 1)

Response: The Department of Environmental Quality (DEQ) does have a plan to guide its oversight of commercial waste disposal facilities. In the Division of Solid and Hazardous Waste (DSHW), an entire section of technical staff has been assigned the responsibility to oversight commercial waste disposal facilities. Individuals within the section have been grouped into "teams" and assigned to each facility. This organization has existed for several years. These individuals are experienced (average 15 years), highly trained, and are tasked, by individual performance plan, to evaluate all aspects of the facilities' operations and the corresponding compliance status on a regular basis. Their performance is reviewed at least annually. Adjustments are made as necessary. The teams/inspectors are given discretion to decide how to implement the management directive. All team members are intimately familiar with each facility's operation. Most, if not all, team members were involved in drafting the facilities'

permits and have extensive experience in compliance and enforcement.

The EPA requires an annual inspection at each of these facilities. However, the DSHW teams conduct inspections/site visits almost weekly. The nature and purpose of each inspection/visit varies. These are technically complex facilities that conduct a variety of operations and handle many different waste streams. The inspectors use their experience and, in conjunction with planning meetings with supervisors, they establish the frequency, sequence, scope and format of their inspections. Inspection priorities are adjusted as field conditions dictate. The inspectors use the facility permit, its attachments and various inspection checklists developed by the section as part of the oversight process. Throughout the course of the year, most of the operational aspects of each commercial facility are evaluated many times over. Inspections are documented. Enforcement actions are issued when necessary.

This approach is consistent with federal guidance. The DSHW's hazardous waste program, with its procedures and protocols, was reviewed and approved by EPA when Utah's program was authorized. EPA has not required any revision to DSHW's program. The DSHW's oversight program is one of the top programs in Region VIII and is more extensive than many state programs in the country. The EPA conducts oversight of Utah's program on a regular basis and each annual evaluation concludes that Utah implements a good program.

DEQ could improve its operational efficiency by ensuring funds for existing programs as well as providing funding for improved file record management and regularly scheduled audits on waste disposal fee collections. (Page 1, paragraph 2, sentence 3)

Response: Additional funding for file management and audits would require a new source of revenue or modification of an existing source of revenue to fully fund these activities. In response to regulatory oversight questions posed by the Hazardous Waste Regulation Task Force (see http://www.eq.state.ut.us/issues/task_force/documents/deq_response.pdf), additional audits were identified as a task that could be implemented with additional resources.

Overall, departmental and divisional coordination needs to improve. (Page 1, Introduction, paragraph 5, sentence 1)

Response: The DSHW and the Division of Radiation Control (DRC) are aware of each other's actions. Bi-weekly coordination meetings with respective staff are held, correspondence is shared, and staff from each division communicate regularly, by phone and face to face, on specific issues.

Oversight Revenue is Dependent on Waste Volume

These charges [Mission of DEQ] are intended to foster the cooperation of industry in maintaining a healthy environment. (Page 2, paragraph 1 of topic, sentence 2)

Response: The DEQ Mission may foster cooperation of industry in maintaining environmental quality, although that may be an outcome. The Mission Statement was established to reflect the work of the Department and its employees. It does reflect the fact that environmental protection and economic development are not mutually exclusive.

Yet, in many instances the point the department needs to step in as a regulator is not clearly defined. (Page 2, paragraph 1 of topic, last sentence)

Response: This sentence implies that DEQ has no defined regulatory role. To the contrary, DEQ's regulatory responsibilities are well understood by the regulated community and the public. DEQ's regulatory decisions are consistent with legislative directive, environmental statutes (19-1-102 UCA) and implementing rules. Consideration of many factors, including economics, leads to careful decisions, not indecisiveness, as implied.

Regulatory Effectiveness Is Dependent on Budget and Staff Constraints

Funding for the regulation of commercial waste disposal facilities comes principally from waste disposal fees. (Page 2, paragraph 1 of topic, sentence 1)

Response: While the Environmental Quality Restricted Account is a significant component of funding for regulation of commercial waste disposal facilities, it is not the "principle" source. Other significant sources of funding for regulation of commercial waste facilities include: Dedicated Credits, such as fees for permit review, including application and review fees; federal funding, particularly for solid and hazardous waste; and General Funds.

DEQ Divisional Operations Differ Significantly

The issue is eventually settled before it is presented to DSHW's Board. The Board can approve or modify the settlement amount. (Page 3, paragraph 2 of topic, sentences 4-5)

Response: The settlement referred to here is a "tentative agreement" by both parties to the proposed terms of settlement. The tentative settlement is subjected to a 30-day public comment period. Following public comment, the Board is presented with the proposed settlement and a recommendation from the Executive Secretary. The Board may reject, approve, or modify the agreement.

DSHW has appropriate and accessible records, but has not developed sufficient written inspection procedures to insure adequate site review. (Page 3, paragraph 3 of topic, sentence 4)

Response: The DSHW believes, with concurrence of EPA, that it has sufficient inspection procedures to ensure adequate site review. See previous comment.

DRC has disorganized file information that limit public use... (Pages 3-4, paragraph 3 of topic, last sentence)

Response: DRC acknowledges that the file management system can be improved, but this statement provides the characterization that information is not available to the public, whereas the Division has fulfilled and consistently provided requested information to the public over the years.

Figure 1 – Utah's DEQ Regulates Five Commercial Disposal Facilities (Page 4)

Response: IUC is not a commercial waste disposal facility. Also, the heading in the figure should be "Type of Waste Disposed" instead of "Type of Waste Stored".

Utah's Radioactive Waste Disposal Program Poses Challenges

No Comments.

Radioactive Waste Regulation Is Complicated

Utah's radioactive waste facility does not allow public access to its financial records, stating that this information is proprietary information. (Page 6, paragraph 3 of topic, sentence 2)

Response: Add the words: [and contractual] after "financial".

Access to records is important for adequate regulation and for proper budgetary discussions at the state level.... For example, because the facility's information is proprietary, the division staff could not determine the economic value of the excess waste. (Page 6-7, paragraphs 5-7 of topic)

Response: The primary issue of this Notice of Violation related to making a determination that the surety was funded adequately, since the excess waste has not been accounted for in the facility closure cost estimates. This had nothing to do with not having access to facility information because cost estimates for disposal of this waste are available from information provided to and verified by the Division.

Radioactive Waste Categorization is Broadly Defined

Figure 2 depicts low-level radioactive waste classifications – A, B, and C. (Page 8, paragraph 2, sentence 4)

Response: Radioactive waste definitions may also take into account the origin/pedigree and the date of generation of the waste.

Over the last twenty years, a federal site reached capacity and closed and three state-operated sites were closed due to water contamination problems. (Page 9, paragraph 4 of topic, sentence 4)

Response: It may be best to reference the sites by name or broaden this statement to provide further explanation, e.g., sites were not subject to the same environmental regulatory regimen that exists today, resulting in water contamination problems and eventual closure of the sites.

Unique Program Requires Original Work by State

No comments.

State Planning Controls Need Updating

The plan is intended to serve as a guide to the division and the board in determining limits on radioactive waste.... One area the plan could be used, but is not is during the license amendment process.

We believe that having a waste plan, outlining allowable limits or types of waste, would allow the division to act on amendments more easily. (Pages 10-11, paragraphs 1-4 of topic)

Response: UCA 19-3-107 does not define “how” the plan is to be used (contrary to statements in the audit report) only that there is a statutory date for completion and that certain elements should be included in the plan. The Division met its statutory obligation by completing the plan, and the plan was subject to public hearings and consideration of the Radiation Control Board. The statute does not require an update to the plan. We would agree that the purpose and use of the plan should be reviewed. The original statutory purpose of the plan needs to be determined. The statute did not provide authority for the plan developed under Utah Code Section 19-3-107 to restrict the types of amendments and revisions submitted under other portions of the statute. Therefore, the plan will not enable staff to refuse to evaluate amendments which otherwise meet the requirements of Utah Code 19-3.

Audit Scope and Objectives

No comments

Chapter II. Waste Site Programs Need Better Planning and Administrative Support

Overall comment: Clarification is needed throughout Chapter II regarding the appearance that the Divisions are doing less work (oversight) when in fact the level of effort has remained steady even though state government in general suffered severe budget restrictions during the last two years.

DEQ Administrative Support of Waste Disposal Oversight Needs Improvement

The department lacks a written oversight plan, including risk analysis, of its oversight priorities. (Page 13, paragraph 1 of topic, sentence 1)

Response: The DEQ has established an oversight program for commercial waste disposal facilities. DSHW inspectors continually assess the waste management activities at each commercial facility and plan and target inspections accordingly. This method of oversight establishes inspection priorities and ensures the appropriate focus on facility activities. The DSHW believes this approach is consistent with the “establishment of priorities by risk analysis” concept suggested by the auditors.

Fee Fluctuations Affect Level of Oversight

General comment:

Two significant issues:

1. One issue is the perception that the Department continues to spend money from EQRA even though deficits are shown (Page 16, figure 4) without giving the broad perspective of EQRA. Recent revisions to DEQ projections indicate positive balances at the end of FY2004 and 2005 due to legislative actions taken during the 2003 general session.
2. The second issue is that if the Department had not taken steps to preserve the account, the account would be broke. The lapsing balances reflect actions taken by the Department to produce savings to the account.

Oversight of Utah's Waste Disposal Sites is Dependent on Waste Disposal Fees Collected from the Regulated Industry

To achieve the budget, DEQ ought to develop a cost structure that reflects both fixed and variable costs. (Page 14, paragraph 2 of topic, sentence 2)

Response: The suggestion to establish a structured fee system based on fixed and variable costs needs additional explanation or examples of how such a structure could work and what fixed or variable costs would be assigned to each. These changes to the fee structure would require a change in statute.

EQRA Purpose Needs to be Better Defined

We believe the Utah Code does not fully distinguish whether the funds will cover all the costs or partial costs of administering radiation control and solid and hazardous waste programs. (Page 15, paragraph 2 of topic, sentence 1)

Response: The Code reflects the discussion of the Legislature when the Act was first adopted. The EQRA funds more than just commercial waste disposal facilities. The auditor may recommend narrowing the use of the funds, but the statute is not vague on the matter. Furthermore, if EQRA funds are not used to fund "costs of administering the radiation control programs and the solid and hazardous waste programs", other funding will need to be appropriated.

Increased Expenditures have Resulted in a Diminishing EQRA Balance

No Comments.

Disposal Fee Revenues Fall Short of Budgeted Expenditures (Page 16)

In figure 4, estimates provided by DEQ initially averaged three years of radioactive waste receipts. This has resulted in a projected deficit to EQRA for FY2005. The Department re-evaluated these projections and believes that FY2005 will be similar to FY2004 in terms of waste receipts. As a result, the 2005 estimated numbers in figure 5 change as follows:

1. Fee disposal revenue: \$6,183,688
2. Budgeted expenditure: \$5,829,940
3. Difference: \$353,759

This will also result in changes to figure 5 regarding FY2005 projections. These will be as follows:

1. Beginning fund balance: \$1,029,918
2. Ending fund balance: \$1,383,677
3. Percent change: +34%

Increase in Lapsing Balance Totals are a Concern (Page 17)

General comment: The amounts returned to EQRA were intentionally done to keep the EQRA solvent. If there had been no monies lapsed, the account would have faced a deficit.

The annual revenues from the uranium mill disposal fee will be \$168,700. (Page 18, paragraph 5 of topic, last sentence)

Response: The annual revenues for the uranium mill program consist of both annual operating fees and a hourly review fee. These revenue sources are intended to fully fund the program. The \$168,700 only represents the annual projected operating fee revenues.

Methods of Financial Assurance Seem Appropriate

No Comments.

Letters of Credit are a Commonly Accepted Form of Assurance

No comments.

Risk to State is Minimal for the Letter of Credit

No Comments.

Perpetual Care Fund also Provides Assurance

The state is the long-term custodian of the waste, long after waste facilities are closed. (Page 20, paragraph 1 of topic, sentence 1)

Response: This is an important issue that needs additional information. The issue of eventual ownership of the property is still in question. Currently the property is privately-owned, and at some point in time will complete closure and post-closure monitoring activities. The Department has recommended (see Tab 8-1, Hazardous Waste Regulation and Tax Policy Task Force, DEQ website at: http://www.eq.state.ut.us/issues/task_force/documents/8.1.pdf) that future ownership of the Envirocare site be determined in statute.

Bonds and Insurance are Also Acceptable Means of Assurance

No comments.

DEQ Should Review Adequacy of Funds to Improve Operational Efficiency

An additional concern is that the department has not budgeted funds which could improve operational efficiencies. These improvements include regular audits of waste disposal fees and a better file management system for one of the department's divisions. (Page 21, last paragraph of topic, sentences 1 and 2)

Response: Information given to the Hazardous Waste Regulation and Tax Policy Task Force identified several areas where if “additional resources” were made available, the Department would provide such services. These were detailed in DEQ’s response to Task Force questions of November 18, 2003 (see http://www.eq.state.ut.us/issues/task_force/documents/deq_response.pdf). Although not identified in the response to the Task Force, we would also agree that the additional resource of a file manager would be of great help to the Division of Radiation Control in conducting its administrative functions.

Funding Concerns Exist with DEQ’s Current Oversight Functions

This issue ought to be addressed by the department as to the priority of sampling. (relating to split groundwater sampling). (Page 21, paragraph 2 of topic, sentence 3).

Response: See response to Groundwater Split Sampling in Chapter III.

Funding of Uranium Mill Tailings Program Poses Questions

No comments.

Sufficient Funds to Cover Costs of Groundwater Well Oversight Remain Uncertain

The Department did not have a lab that could perform the necessary tests until relatively recently. (Page 23, paragraph 2 of topic, sentence 1)

Response: This refers to the recent groundwater split sampling event at Envirocare (April, 2004) in which the Divisions use the State Health Laboratory to conduct the analyses of samples collected. The State Health Department can do many analyses, but its radiological analysis capability is limited. In those instances where the State Health Laboratory (and this applies elsewhere) cannot perform the analysis, it works closely with the agency to find a reputable laboratory. It would be better stated to say: "Radiological samples must be analyzed by an outside laboratory because the State Health Laboratory has not maintained the necessary capability to perform all needed radiological analysis. The State Health Laboratory works closely with the Divisions in assuring that all samples receive the requested analysis."

Funding Needed to Improve Operational Efficiency within DEQ

The Department should conduct regular audits on disposal fees. . .DRC needs better file record management. (Page 23, paragraph 1 of topic, sentences 1 and 3)

Response: These issues will be addressed in the fees and file management discussion areas.

DEQ Needs to Conduct Regular Fee Audits

DEQ has completed only one financial audit performed in 1997, on the commercial waste facilities. (Page 24, paragraph 1 of topic, sentence 1)

Response: The DEQ audit in 1997 went back to the inception of the fees. The current audit (underway) will cover the period from 1997 to present.

DRC Lacks Adequate File Keeping System

Response: We concur with the auditor's findings regarding hiring a full-time file keeping person. The funding for this position has not yet been determined.

Some Waste Disposal Fees May Not Bring in Desired Revenue Levels

The curie fee on radioactive waste is \$1 per curie on a shipment. (Page 24, paragraph 1 of topic, sentence 1)

Response: During the 2001 Legislative session, this new fee, in conjunction with the 10 cents per cubic foot, charge was put in place in anticipation of any eventual approval of Class B and C low-level radioactive waste. As previously stated, Class B/C is higher in radioactivity content and would generate significant fee revenue to cover the cost of oversight. This was presented to the Hazardous Waste Regulation and Tax Policy Task Force at its April 22, 2004, meeting. (See Tab 19, Hazardous Waste Regulation and Tax Policy Task Force, DEQ website). There was realization that per curie fee with only Class A waste would generate a small amount of revenue.

Recommendations

No comments. See response to recommendations at end of letter.

Chapter III. Commercial Waste Disposal Oversight Can Improve

Communications to the Hazardous Waste Regulation and Tax Policy Legislative Task Force imply a certain level of oversight is being conducted yet, in actuality some areas have gone without oversight for a few years. (Page 27, paragraph 1 of topic, sentence 2)

Response: See DEQ response to Communications to the Task Force Imply Regular Oversight of Groundwater Program.

The oversight of commercial waste disposal programs by the Department of Environmental Quality is in need of direction and planning. Finally we believe that DSHW can improve their waste disposal facility oversight. (Page 27, paragraph 1, sentence 1 and paragraph 2, last sentence.)

Response: The DEQ has developed and implemented a program for oversight of the commercial waste disposal facilities. See previous comments.

Performance of DRC's Groundwater Protection Program Raise Questions

General Comments: Groundwater is not the only environmental media that needs to be monitored to assure that radiation is not escaping the facility. These other media must include: air, soil, surface water, direct gamma radiation monitoring, and personal dosimetry. It is inappropriate to focus on groundwater only.

Sampling Program is not Risk-Based

General Comment: Page 28 and 29, Sampling Program is not Risk-Based.

This places the auditors in a position of making opinions regarding how to best conduct a split groundwater sampling program based on information provided. In the discussion somewhere, there needs to be a more visible explanation regarding the groundwater split-sampling program; who it applies to, what is the intended purpose, and which facilities are covered. There is much text in the report surrounding how split-sampling events at Envirocare were not conducted, but very little text about split-sampling events occurring at uranium mill facilities (IUC). In fact, split-sampling resulted in the discovery of the chloroform contamination problem at IUC. Given the choice between Envirocare (no indication of contamination) and IUC (suspected contaminated) and limited funding, it appears DRC made the right choice for split-sampling.

If the aim of the groundwater protection program is to ensure a favorable health-safety standard, the wells that the division selects for split sampling should reflect the areas most likely to identify contamination. (Page 28, paragraph 1 of topic, sentence 1)

Response: The objective of designing and implementing a split sampling program is not to “reflect areas most likely to identify contamination.” That is an objective of the facility’s groundwater sampling or monitoring program. The objective of the DEQ split sampling program is to take identical samples in order to test the operators’ sampling methods, and to test the analytical methods of the lab. The ability to get results equivalent to those from the operators’ split-sample provide assurance in the reliability of the larger monitoring program conducted by the operator.

DRC’s Well Selection Does Not Reflect All of the Disposal Site’s Operations

No comments.

Figure 6, Wells Split-sampled Surround Two of the Four Cell Types (Page 29).

General Comment: Groundwater flow directions on the figure are overly simplified. Flow directions change with time. Because they do change with time, they need to be considered in the context of each split sampling event. The figure needs to be annotated as to what date(s) the head measurements were made.

...sample each of the 57 groundwater monitoring wells. . . (Page 29, paragraph 1 after Figure 6, sentence 1)

Response: Current total count of Point of Compliance (POC) wells at Envirocare is 63 wells, as follows:

- LARW Cell = 13
- 11e.(2) Cell = 14*
- Class A Cell = 18

- Mixed Waste Cell = 14 (17, if you count replacement wells GW-67R, GW-68R, and GW-69R)
- Evaporation Ponds = 4
- Two 11e.(2) wells = head monitoring only (GW-37 and GW-38R).

Selection of Well Samples Should be Risk Based

Instead of selecting wells based on budget limitations. . . (Page 30, paragraph 1 of topic, sentence 1)

Response: Based on groundwater flow directions from September 2003, and the current disposal cell geometry, 86% (54 of 63) of the POC wells at Envirocare are downgradient of one or more potential pollution sources, including disposal cells and evaporation ponds. Because groundwater flow directions change with time, any determination about a well's downgradient position needs to be made in context of data available at the time of each separate sampling event. These considerations were made by DRC staff prior to each split-sampling event; wherein both up and downgradient wells were selected for split-sampling. Consequently, it is inaccurate to conclude that DEQ staff did not consider groundwater flow position in its selection of monitoring wells for split-sampling.

DRC Sampling Frequency Needs Review

The division sends its sample to a different laboratory than the operator's so as to avoid conflict of interest issues. (Page 30, paragraph 2 of topic, sentence 5)

Response: The reason for using a different laboratory isn't so much to avoid a conflict of interest, but it is to provide an independent check on the operator's laboratory.

Communications to the Task Force Imply Regular Oversight of Groundwater Program (Page 31)

General comment: We appreciate the auditors pointing out these problems with text provided to the task force. We will review and revise the text to ensure it does not imply something that the Division is or is not doing,

State Quality Assurance Split-Samples Have Only Been Done in Four of the Last Ten Years

Our review of groundwater split samples reveals that the DRC conducted split-sampling events in 1995, 1996, 2000, and 2001. (Page 31, paragraph 1 of topic, sentence 1)

Response: This does not indicate split sampling events at the International Uranium White Mesa Mill that occurred in 1999, 2000, 2001, and 2002.

Figure 7. Percentage of Wells Split-sampled Has Decreased

No comments.

State's Disposal Site Water Sampling Lacks Sufficient Policies

No comments.

Budgetary Needs Elsewhere Have Hampered Water Quality Oversight Program

No comments.

The Division's Sample Selection Has Been Based on Costs

No comments.

Figure 8. The Cost for Analyzing Samples Varies With Each Cell Type (Page 33)

General comment: The price list provided in this figure is an over-simplified summary. Close review of the prices shows the 2002 estimate tabulated by DRC staff did not include more than 12 other contaminants, not listed as GWPL parameters, yet required by the GW Permit as general monitoring parameters. Split-sampling costs for DEQ are higher than those shown in Figure 8. After consideration of the radiologic parameters that need to be contracted to a third party laboratory, and the costs for the State Health Laboratory to run the remaining parameters (including the general monitoring parameters required by the GW Permit, the total analytical costs to DEQ is about \$2,200 per well (LARW and Class A Cells). Statements focus only on the analytical costs, and overlook several other equally important work elements and costs necessary to split-sampling, including preparation and planning, fieldwork of sampling, and data reduction and evaluation after sampling. After consideration of these other non-analytical costs, the total split-sampling cost to DEQ is about \$2,900 per well.

New Informal Policy Should Result in More Oversight for the Current Year (Page 33)

General comment: The auditors were provided with a copy of the written policy.

However, during this current split-sampling a collection error was made. (Page 34, paragraph 3 of topic, sentence 1).

Response: Split-sampling error made was committed by the State Health Laboratory staff, who erred in preparation of the number and type of sampling bottles required by the third-party

laboratory. This error prevented certain radiologic samples from being collected at some of the Envirocare compliance wells.

Division's Budget was Sufficient to Allow for Split-Sampling (Page 34)

General comments: This paragraph fails to account for the other necessary work elements and costs involved in split-sampling, i.e., preparation and planning, actual fieldwork of sampling, and data reduction/evaluation. The Division did conduct groundwater split-sampling in 1999, 2000, 2001 and 2002 at the International Uranium White Mesa Mill. As part of a sound fiscal management policy, the Department needs to maintain a healthy balance within EQRA to account for the cyclic nature of waste disposal and resultant fee collection. While it appears that ending fund balances were large, these balances reflect the concept of maintaining that healthy balance. Additionally, \$40,002 of the 2003 balance lapsed back to EQRA that was annual uranium mill fees paid in advance.

Groundwater Sampling Differs by Site

No comments

Figure 9. States' Groundwater Programs Vary (Page 35)

General comment: This figure omits other environmental sampling that is necessary to determining if radiation can or has escaped from a radioactive waste disposal facility, including monitoring of air, soil, surface water, direct gamma radiation, and personal dosimetry. It is inappropriate to focus on groundwater only.

Inspection Programs Appear Effective and Seem to Meet Current Health-Safety Needs

No comments.

Site Inspection Program Overall Appears Effective

No comments.

Annual Inspections Are Segmented into Manageable Modules

No comments.

Site Inspection Program is Limited by Administrative Problems

No comments.

After a Limited Review, 2002 Inspections Also Appear Thorough

No comments.

DRC Spot Inspection Program Appears to Meet Current Health-Safety Needs

No comments.

**Inspections Are Conducted on Selected Shipments and Accompanying Paperwork
(Page 38)**

General comment: No mention was made of license conditions that require pre-shipment samples, sampling at the site by Envirocare for fingerprint and radiological analysis, - this is part of the “total” regimen that helps ensure waste is properly manifested and is shipped properly.

Utah Inspects Fewer Shipments

No comments.

Utah Inspectors Spend Fewer Days at Disposal Site (Page 39)

Response: Date in paragraph 1 should be September 2003.

DSHW Can Improve Disposal Facility Oversight

DSHW does not prepare written inspection plans for overseeing the commercial waste facilities.
(Page 40, paragraph 1 of topic, sentence 3)

Response: The DSHW has implemented a well-developed oversight program for the commercial waste disposal facilities. In addition, the inspectors use the facility permit, its attachments and various inspection checklists developed by the section as part of the oversight process. However, the DSHW questions the use of the prescriptive and inflexible structure (inspection plans) as the only means of oversight suggested by the audit. Such an approach may be counterproductive and ineffective. The inspection teams need the discretion and flexibility to change the scope and direction of inspections without being constrained by a mandatory checklist.

High priority activities at each facility are discussed with supervisors and targeted for inspection in planning and strategy meetings as part of the oversight program. By focusing on these activities and using experience and judgment to adjust in the field, the DSHW believes it does establish inspection priorities based on “risk.”

DSHW Lacks Inspection Planning

DSHW does not facilitate the preparation and usage of written yearly inspection plans for its compliance oversight. . . (Page 40, paragraph 1 of topic, sentence 1)

Response: The DSHW annually establishes a written inspection schedule of all commercial facilities. In addition to the annual inspection (which usually includes EPA inspectors), inspections/site visits are conducted throughout the year. Inspectors meet regularly with supervisors to identify priorities and plan these inspections/site visits.

DSHW Does Not Prepare Written Inspection Plans for Commercial Waste Facilities

(Page 40)

Response: The DSHW has implemented a well-developed oversight program for the commercial waste disposal facilities. While some forms of inspection planning may not be reduced to writing, inspection planning and prioritization occurs regularly throughout the inspection year. This planning takes place in coordination meetings with the DRC, in meetings with DSHW management and within the individual inspection teams. The inspection teams have been inspecting these facilities for many years and are fully aware of the activities and operations that require oversight. The inspection teams have developed the expertise and experience necessary to thoroughly evaluate compliance and all major “risk areas” each year.

Further, DSHW does not conduct formal risk assessments nor analyses of facilities’ violation trends. (Page 41, paragraph 3 of topic, sentence 1)

Response: The DSHW does conduct assessments of violation trends. These assessments occur during “case preparation.” This assessment includes a discussion of current violations in comparison with previous violations. This is “trend analysis.” Various enforcement action options are also discussed and considered with the specific intent to identify the most effective option, given the specific circumstances. This is “effectiveness analysis.” This assessment of trends is then included in the inspection planning previously mentioned.

These assessments and discussions are “enforcement confidential” because they are part of the DSHW’s deliberative administrative enforcement process. Therefore, they are not documented in writing. This policy is consistent with that of other agencies with regulatory and enforcement responsibilities, including the EPA. It should be noted that the DSHW’s penalty calculation worksheets do reflect this assessment of violation trends (see adjustment for “Repeat Violations”). These worksheets become public documents when enforcement settlements are released for public comment.

Contrary to the audit finding, the DSHW's self-assessment report submitted to EPA each year does include the affirmation that "periodic analyses of effectiveness of evaluation activities" have occurred.

Inspectors Focus on the Areas With Most Problems as They Arise (Page 41)

General comment: The DSHW believes it has implemented a well-developed oversight program for the commercial waste disposal facilities. In addition, EPA inspectors are included in developing the scope of the annual inspection.

Current Penalty Process Results in Lower Fines

No comments.

Negotiations With Violators Result in Fine Reductions

Division managers consider this negotiation process to be protected which concerns us. (Page 42, paragraph 2 of topic, sentence 1)

Response: The DSHW believes that penalty negotiations must be confidential. These negotiations are part of the administrative enforcement process and should be appropriately limited to the agency and the alleged violator. This is consistent with the EPA's policy and has a legal basis as well (63-2-304 UCA).

Maximum Penalty Has Not Been Updated Since 1981

However, according to DSHW management, the amount of penalty that Utah imposes on a facility is less of a deterrent for future violations than actually getting an NOV. (Page 43, paragraph 2 of topic, sentence 6)

Response: The auditor misunderstood the statement. Penalties have a significant deterrent on future violations. However, given the competitive nature of the waste disposal business, the issuance of an enforcement action also has a significant deterrent effect.

DSHW's Approach is to Ensure Facilities are in Business and in Compliance

No comments.

DSHW Should Sample Treated Waste

No comments.

DSHW Does Not Collect and Analyze Samples

. . .often waste not meeting the treatment standards was deposited in the cells. . . (Page 44, paragraph 2 of topic, sentence 3)

Response: The narrative that “often waste not meeting the treatment standards has been deposited in the cells” is misleading. In the year 2000, Envirocare disposed of approximately 239 treated loads in the mixed waste cell. Only two (.8%) were not successfully treated. In 2001, 0 out of 160 loads (0%) were not successfully treated. In 2003, two out of 22 loads (9%) were not successfully treated. The numbers of loads disposed in 1997 and 1998 were not immediately available, but we believe that the ratio would be similar. We do not believe that these low percentages constitute “often” as described in the narrative.

Figure 10. One Facility’s Violations for Inappropriately Depositing Treated Waste (Page 44)

Response: See comment above regarding treated waste.

Other States Split-Sample Treated Waste

No comments

Recommendations (Page 45)

We recommend that DSHW design and implement written, uniform, annual inspection plans.
(Recommendation 3)

Response: The DSHW has implemented a well-developed oversight program for the commercial waste disposal facilities. The DSHW questions the use of the prescriptive and inflexible structure (inspection plans) as the only means of oversight suggested by the audit. Such an approach may be counterproductive and ineffective. The inspection teams need the discretion and flexibility to change the scope and direction of inspections without being constrained by a mandatory checklist.

We recommend that DSHW sample treated waste to ensure that it meets treatment standards.
(Recommendation 5)

Response: This recommendation implies that continual sampling by the DSHW is the only way to verify that treatment criteria were met. The DSHW disagrees. All treatment

verification samples are sent off-site to independent labs. These labs are required to be Utah-certified. Certification means that these labs have been challenged and audited to verify that they can perform the required analytical methodologies on the representative analytes. In addition, the DSHW requests full data packages (raw data with analytical notes from the lab) for questionable data. For these reasons, the DSHW believes that treatment can be verified using the facilities' data.

Chapter IV. Record Keeping and Fee Collection Reviews Need Improvement

DEQ's Administrative Controls Can Improve

No comments.

Radiation Division Lacks Adequate Record Keeping System

The division needs a better record organization. . .include a database for Notices of Violation (NOVs) and inspections. In its review. . .the ...NRC was also concerned about the Division's records management. (Page 48, paragraph 1 of topic, sentences 2 and 3)

Response: The sentence before discusses needs such as a database for tracking of NOVs and inspections. The NRC review was a broad statement regarding records management, the recent NRC review clearly indicated that the low-level waste inspection program was satisfactory.

Better Record Organization Systems Needed

No comments.

DRC Should Keep a Database on all NOVs Issued and Inspections Completed

No comments.

The NRC is Concerned with Records Management

No comments.

DEQ Can Improve its Fee Collection Controls (Page 50)

General comment: The process of collection of fees can always be improved, but there has to be some reliance and confidence that the commercial waste facilities will be responsible in the

reporting and payment of fees. Given that it appears that some facilities are not doing an adequate job, will require the Department to reassess all aspects of its fee collection process.

DEQ Is Not Proactive in Auditing Fees

However, the DEQ recently began an audit of one facility. (Page 50, paragraph 2 of topic, sentence 1)

Response: The Legislative Auditors accompanied the Department during the first 3-4 hours we were on site at the start of the audit. During this time there were many questions that needed to be asked to gain a full understanding of the various types of manifests and the facility's policies and procedures. Asking questions and gaining a full understanding of the procedures and information available at the beginning of an audit is essential and necessary in order to be able to perform a good audit to ensure that the waste facility has paid the proper amount of fees to the Department. It does not mean that we are unable to perform a good audit.

Figure 12. One Facility Has Underpaid More Than \$270,000 in Waste Disposal Fees.

No comments.

Divisions Do Not Utilize All Available Information

However, the accounting staff is not aware that the facilities are submitting the waste manifests to the divisions. (Page 51, paragraph 2 of topic, last sentence)

Response: The DSHW's accounting staff is (emphasis added) aware that facilities are submitting manifests to the Division.

Fee Collection Regulations Need Clarification

No comments.

Code Clarification Regarding Fee Collection May be Necessary

No comments.

Formal Policy Regarding Applicability of Fees Needs to be Issued

No comments.

Informal Policy of Fee Forgiveness Reduces State Revenues

DEQ has unilaterally decided not to collect. . . fees which falls under multiple waste categories.
(Page 54, paragraph 1 of topic, sentence 1)

Response: We do not believe that it was the intent of the Legislature to double charge on any of the waste streams. We believe that the intent of the Legislature was to charge the higher of any applicable fees for a specified waste delivery

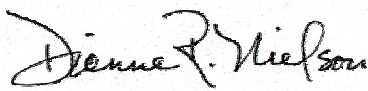
Informal Policy is Not Always Followed

No comments.

Recommendations

The Department appreciates the work of the Legislative Auditors in conducting this audit. The Department believes that such audits are beneficial in helping foster continuous improvement within the agency. The Department will work closely with the Legislature and the Hazardous Waste Regulation and Tax Policy Task Force relating to resolution of the recommendations presented by the auditors.

Best regards,



Dianne R. Nielson, Ph.D.
Executive Director

cc: Dane Finerfrock, Director, Division of Radiation Control
Dennis Downs, Director, Division of Solid and Hazardous Waste
Steve Higley, Director, Office of Support Services
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